IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8588 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R L GUPTA

Versus

PRESIDING OFFICER

Appearance:

MR BHARAT T RAO for Petitioner

NOTICE SERVED for Respondent No. 1

MR KM PATEL for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/12/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this court is the former employee of Shri Dinesh Mills Ltd., the respondent no.2

herein (hereinafter referred to as 'the Mills'). It appears that by order dated 6th June, 1987, the service of the petitioner was terminated by the Mills. Feeling aggrieved, the petitioner raised an industrial dispute which was referred to the Labour Court at Vadodara, and was registered as Reference (LCV) No. 861/87. A preliminary issue as regards the status of the petitioner was raised by the Mills. The issue whether the petitioner can be said to be a 'workman' within the meaning of section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') was decided as a preliminary issue and the learned Presiding Officer by his judgment and order dated 7th August, 1991, held that the petitioner was not a 'workman' within the meaning of section 2 (s) of the Act, and accordingly rejected the Reference. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Rao has contended that though the petitioner was appointed as a Supervisor, it is not the designation or nomenclature of the office which is relevant for the purpose of determining whether the person can be said to be a workman or not. It is really the nature of duties performed by the person which determines whether the person can be said to be a 'workman' or is excluded from the definition of the 'workman' or not. He has submitted that in the present case, the petitioner had no administrative powers whatsoever. He had no power to appoint or suspend or dismiss any workman. He had no control on the manpower. He had no power to initiate disciplinary action against any of the workmen or to demote or promote such workman. The petitioner was supposed to work under the control of the Head of the Department one Shri O.C.Shah. The petitioner, therefore, was necessarily a 'workman' within the meaning of section 2 (s) of the Act. The petitioner's claim was resisted by the Mills. It was contended that the petitioner was appointed to be a Supervisor and was Shift Incharge. It was his duty to ensure that all the machines were kept in good repairs and also to ensure the quality and quantity of the finished goods. The court below considering the statement of claim made by the petitioner and the evidence on record, held that the petitioner was employed in a supervisory capacity and that his salary was more than Rs.1600/-. The petitioner, therefore, can not be said to be a 'workman' within the meaning of section 2 (s) of the Act.

Mr. Rao has relied upon the judgments of the Hon'ble Supreme Court in the matters of VED PRAKASH GUPTA VS M/s DELTON CABLE INDIA (P) LTD (AIR 1984, SC 914),

S.K.VERMA VS MAHESH CHANDRA & ANR (AIR 1984, SC 1462), NATIONAL ENGINEERING INDUSTIRES LTD. VS SHRI KISHAN BHAGERIA & ANR (AIR 1988, SC 329), S.K.MAINI VS M/S CARONA SAHU CO. LTD (AIR 1994 SC 1824). Mr. Patel has contested the petition, and has relied upon the evidence of the petitioner . Mr. Patel has also relied upon the judgments of the Hon'ble Supreme Court in the matters of NATIONAL ENGINEER INDUSTRIES LTD. VS SHRI KISHAN BHAGERIA & ANR (AIR 1988 SC 329), S.K.MAINI VS M/S CARONA SAHU CO. LTD & ANR (AIR 1994 SC 1824), H.R.ADYANTHAYA ETC. VS. SANDOZ (INDIA) LTD. (AIR 1994, SC 2608), and of this court in the matters of DIGVIJAY CEMENT CO. LTD VS CHANDRAVANI J.S. (1998 {2} GLH 302) , and LAXMIKANT MOHANLAL DAWDA VS SERVO DRIVES PVT. LTD (2000 {1} GLH 85. He has submitted that the judgment in the matter of S.K.Verma (supra) has been held to be per-inquirium in the matter of Sandoz (India) Ltd.

On perusal of the statement of claim made by the petitioner before the court below, I find that the petitioner has narrated the duties and functions which he was not required to perform. However, he has not enumerated the duties which he was required to perform. On perusal of the evidence on record, I find that the petitioner was Shift Incharge. It was his duty to keep all the machines in good repairs and get them repaired by jobers and fitters. It was his duty to ensure the quality and quantity of the finished goods and also to recommend the leave asked for by the workmen working under his charge. It is indisputable that the salary of the petitioner was more than Rs.1,600/- PM. Considering the nature of the duties the petitioner was required to perform, it is evident that the petitioner was employed in a supervisory capacity and was drawing the wages more than 1600/- p.m. that is the ceiling prescribed under Clause (iv) to section 2 (s) of the Act. The petitioner, therefore, can safely be held to have been excluded from the definition of the word 'workman' as defined under section 2 (s) of the Act. The Tribunal, therefore, has rightly rejected the Reference made to it.

In view of the above discussion, the petition is dismissed. Rule is discharged.

[Miss R.M Doshit, J.]

JOSHI